

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Request by State Broadcasters)	
Associations for Declaratory Ruling)	
Concerning Application of the)	MB Docket No. 07-137
Commission's Political Programming)	
Regulations to Three Internet "Airtime)	
Sales Programs")	

REPLY COMMENTS OF BID4SPOTS, INC.

Bid4Spots, Inc. ("Bid4Spots") hereby submits its reply to the opening comments filed in this proceeding on August 6, 2007. For the reasons set forth herein and in its own opening comments, Bid4Spots respectfully submits that the Commission should confirm that broadcast advertising spots sold via Internet auction websites such as Bid4Spots should not count toward the Lowest Unit Charge ("LUC") obligations of individual broadcast stations that utilize these auction services.

As Bid4Spots demonstrated in its August 6 Comments, Commission precedent and policy instruct that Internet-based airtime sales services should be treated in the same way as network and other similar multi-station sales vehicles. In analogous circumstances, the FCC has recognized that arrangements between traditional broadcast networks and affiliated stations are beyond the scope of the statute and the Commission's LUC regulations. The agency also has

excluded other multi-outlet time sales arrangements including so-called “non-wired” or “unwired networks” from the reach of the LUC provisions.¹

The groups of responding stations created in each of the weekly online auctions conducted by Bid4Spots should be viewed in the same way – as unique multi-station sales groups or advertiser-defined non-wired networks. The individual stations that make use of Bid4Spots service do not contract directly with advertisers and do not otherwise offer time for sale on this basis. And most significantly, participating advertisers must structure their Bid4Spots auction requests based on general market and geographic criteria, cannot specify individual stations, and purchase spot time on an aggregated “cost per thousand” or “CPM” basis.²

In the opening round of comments in this proceeding, a wide range of broadcast representatives and all three of the existing Internet sales auction companies identified in the Commission’s Notice³ have weighed in with the same message: that broadcast stations that make use of online advertising auctions should not be required to incorporate the “sales prices” generated through these auctions into their individual LUCs. SoftWave Media Exchange (“SWMX”) and Google, Inc. (“Google”) submitted detailed descriptions of the manner in which their online airtime sales services operate. Like Bid4Spots, these services are based on

¹ *Michael H. Bader*, 56 FCC 2d 840 (1979); *Robert L. Olender*, 61 FCC 2d 694 (1978); *Charles M. Firestone*, 5 FCC Red 3255 (1990); *Political Primer*, 100 FCC 2nd 1476, 1514 (1984).

² Interep National Radio Sales, Inc. (“Interep”), the successor in interest to the “unwired network” that was the subject of the *Michael H. Bader* decision cited above, observed that “[o]ne key element that formed the basis for the staff ruling was that the rep did not sell time on individual stations. Rather, the rep sold the entire ad hoc group, offering an aggregate of audience and market characteristics, and negotiating a rate for the group based on those variables. This essential aspect of the exemption of unwired network rates from the lowest unit charge computation is present in the internet sales programs which are the subject of the request for declaratory ruling.” Interep Comments at 3-4.

³ Media Bureau Public Notice, MB Docket No. 07-137 (July 5, 2007).

advertiser-determined criteria and budgets for multi-station packages, and not on direct sales of time to individual stations.⁴

The State Broadcasters Associations who submitted the request for declaratory ruling at issue in this proceeding as well as the National Association of Broadcasters (“NAB”); “Joint Broadcasters” Media General, Inc., Allbritton Communications Company, Meredith Corporation and Gannett Co. Inc.; and radio station operators Rubber City Radio Group, Inc., Haugo Broadcasting, Inc., and Base Communications, Inc. also submitted comments in the opening round. All of these parties agreed with Bid4Spots that applicable Commission policy and precedent on traditional networks, non-wired networks and other multi-outlet advertising sales vehicles compel the conclusion that, although based on technology that was not available in previous years, the three online airtime sales services should be held to be beyond the intended scope of the LUC provisions. Accordingly, spot sales made through such services, as part of advertiser-defined multi-station buys, should not be included in the LUC calculations of individual participating stations.⁵ Indeed, as several parties point out, the companies that are the subject of the instant Declaratory Ruling proceeding essentially have taken the concept of an *ad*

⁴ See SWMX Comments at 2-6; Google Comments at 1-2.

⁵ See State Broadcasters Associations Comments at 4 (“where a company (i) aggregates a number of radio and/or television stations for the purpose of airing the spots of the company’s advertisers on such stations, (ii) solicits advertisers to air their spots on the aggregated stations based on demographics or some other selection methodology, and (iii) causes such spots to be aired over some or all of those aggregated stations, the amount of money the company pays each station to air the spots is not to be included in any participating station’s LUR”); NAB Comments at 5-6. (“while the technology to create dynamic networks of stations has evolved, fundamentally these sales practices are no different from those of the traditional unwired network”). See also Joint Broadcasters Comments at 2; Interep Comments at 4; Haugo Broadcasting Comments at 1; Base Communications Comments at 1.

hoc network or multi-station sales group and tailored it to the new technology and convenience of the Internet.⁶

Equally important, the parties consistently emphasized that the transactions that take place via Bid4Spots and other online auction services generate rates that would not be available in individual station-to-advertiser sales, even for a station's most-favored commercial advertiser.⁷ As noted above, with respect to each of the existing services, stations and advertisers negotiate only via the online auction system and not directly with each other. Moreover, by aggregating time on numerous stations simultaneously, the Internet sales companies generate efficiencies that enable advertisers to purchase spots at substantially discounted rates that stations simply would not offer on an individual basis.

As Bid4Spots and several other commenters confirmed, the policy objectives of the LUC obligations and of other FCC political broadcasting requirements are achieved very effectively via the online auction model. Most fundamentally, despite differences among the existing auction companies, each provides advertisers with an opportunity to purchase broadcast time at the lowest possible rates. Moreover, services such as Bid4Spots have built-in mechanisms to ensure that legally qualified candidates that make use of their systems will enjoy even-handed and consistent treatment and receive the "LUC" currently offered via the relevant online auction for the geographic and demographic markets they wish to target.⁸

⁶ See Interep Comments at 4-5; State Broadcasters Associations Comments at 5-6; NAB Comments at 5-6.

⁷ See NAB Comments at 6; Joint Broadcasters Comments at 2-3.

⁸ See Bid4Spots Comments at 14; SWMX Comments at 11-12; NAB Comments at 8; State Broadcasters Association's Comments at 5-6. As noted in its opening comments, Bid4Spots is prepared to assist candidates in structuring their proposals and budgets to reach their desired geographic and demographic targets and, as appropriate, to replicate those of competing candidates who have previously used the Bid4Spots auction system. The company routinely generates information on the disposition of requests for the comparable to that required for

More broadly, the record reflects that Bid4Spots and analogous services are nascent operations that unquestionably serve the public interest and should be encouraged by the Commission. As several parties explained, superimposing additional LUC obligations on the individual broadcasters that make use of these online services would significantly undermine the business model of these emerging online companies. This would, in turn, drive up the cost of spot time for all advertisers, including political candidates.

Only one commenter in the opening round of this proceeding takes the position that advertising spots sold via Internet sales auctions should be included in the LUC calculations of individual stations. LUC Media Inc. (“LUC Media”), a company specializing in the purchase of advertising time for Democratic candidates, asserts that “[e]xcluding the sales prices from any sales programs when calculating the lowest unit charge ... would erase years of progress by the FCC” in enforcing the LUC provisions.⁹ In making this claim, LUC Media focuses on its characterization of Internet auction services as automated “fire sales.”¹⁰

These arguments present an incomplete and inaccurate assessment of the issues relevant to this proceeding. While it is true that the FCC has determined that “fire sale” prices should be incorporated into station LUC calculations, that is not the operative point here. Indeed, LUC Media completely ignores the consistent line of FCC precedent discussed above concerning

“political file” purposes and therefore can readily provide a competitive candidate the necessary information to craft a responsive time purchase. Bid4Spots’ experience confirms that, in practice, a competing candidate can achieve equivalent if not identical results in terms of overall response, demographic and geographic research, and CPM. Thus, Bid4Spots does not anticipate problems in satisfying the policy objectives of the FCC’s equal opportunities provisions, in much the same way that traditional and non-wired networks and other multi-outlet sales programs have for decades.

⁹ LUC Media Comments at 1.

¹⁰ *Id.* at 2.

traditional and non-wired network and other multi-outlet sales programs – now stretching back nearly thirty years – which clearly establishes that such sales should *not* be included in calculating the LUC of individual participating stations.

LUC Media also suggests that if the Commission exempts these Internet sales programs from the LUC calculations, “all other types of fire sales will be discontinued” and “[a]ll unsold inventory would go into the Internet sales pool,” leaving candidates “with their own, higher, candidate only class of time.”¹¹ LUC Media even claims “that broadcasters would go so far as placing a large portion of airtime unsold at the beginning of the political window into Internet sales pools to avoid having to comply with Section 315(b) altogether,” thus creating “an exemption that will swallow the rule.”¹² These claims are speculative in the extreme, and wholly unsubstantiated.

To the contrary, the overwhelming thrust of the comments on the record is that Bid4Spots and its online competitors deal in relatively small amounts of “remnant time,” helping to place inventory that would otherwise go unsold. Neither the services themselves nor the broadcast interests who submitted comments believe that is likely to change significantly in the future. Rather, the online services represent a cost-effective alternative opportunity for advertisers – including political candidates – that can in fact *lower* the cost of advertising. As the State Broadcasters Association aptly observed,

It is clear that these programs epitomize the enormous potential of the Internet to make business transactions more efficient. These programs also increase competition between stations for the benefit of advertisers and the listening and viewing public. Furthermore, where a candidate has the option of acquiring “network” time . . .

¹¹ LUC Media Comments at 6-7.

¹² *Id.* at 7.

or purchasing time directly from the station at the station's LUR, it can be said that the candidate has the best of both worlds, and thus is not prejudiced by the application of the "no impact on a station's LUR" principle to such types of programs.

CONCLUSION

The opening comments demonstrate that there is every reason to encourage the development of innovative new services such as those offered by Bid4Spots and other online airtime sales organizations, and no basis whatsoever to saddle them with unnecessary and inappropriate regulatory baggage. These services fit logically and well within the principles established by the FCC in its decisions concerning non-wired networks and similar multi-outlet advertising sales vehicles, and the Commission should confirm that they will be treated in the same fashion. Accordingly, the Commission should issue the requested declaratory ruling that

sales through such services need not be included in the LUC calculations of individual participating stations.¹³

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James R. Bayes". The signature is fluid and cursive, with the first name "James" being more prominent.

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¹³ If for any reason the Commission is not prepared to issue a definitive ruling at this time, it should at a minimum allow the services and participating stations to proceed on the basis proposed through the 2008 election cycle. Thereafter, if questions remain, the agency could revisit the issue with the benefit of the experience gained during the upcoming campaign. See NAB Comments at 9-10.